GLOBAL FEDERATION OF INSURANCE ASSOCIATIONS

To: John Peterson

Head of Division,

OECD Tax,

2, Rue André Pascal

75016 Paris

Date: 13 August 2024

Subject: GFIA follow-up letter to the OECD on issues deriving from the implementation of the Global Anti-Base Erosion (GloBE) Rules

Dear Mr Peterson,

The Global Federation of Insurance Associations (GFIA) gratefully acknowledges the extensive work carried out so far on the Global Anti-Base Erosion (GloBE) Rules for a global minimum tax on MNE groups and the consideration given to the industry's submissions in the comprehensive review of rules and guidance.

As member jurisdictions of the OECD / G20 Inclusive Framework on BEPS are now implementing these rules in their domestic legislation and guidance, a few practical issues or loopholes are arising.

GFIA considers that a consistent and sound implementation of the GloBE rules across jurisdictions would benefit from further clarification at OECD level, directly in the consolidated commentary to the Model Rules.

In this regard, please find hereafter various issues arising from the implementation of the GloBE rules across jurisdictions, that GFIA member associations would like to bring to your attention. This note is not a comprehensive review of all pending issues deriving from the implementation process of GloBE rules across relevant jurisdiction for the industry, but an attempt at describing those that are currently being addressed by (re)insurance companies with regard to domestic draft or enacted legislation on the global minimum tax.

In this regard, recent developments on local registration requirements for in-scope MNEs that are implemented in some jurisdictions appear to be excessive, thus overlapping with relevant information due to be reported in the Global Information Return. In most cases, as the rules are still evolving and there is room for interpretation, MNE groups have not yet finalised the complete MNE Group scope for the purposes of GloBE rules. Therefore, only relevant information on the UPE and/or the designated reporting entity should be required of MNE groups at this stage of the implementation process. As mentioned before, GloBE rules are already very complex to comply with so there is no need for an additional layer of complexity.

Global Federation of Insurance Associations (GFIA)
Secretariat : rue du Champ de Mars 23, 1050 Brussels, Belgium
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For simplification purposes, GFIA also urges the OECD to reconsider introducing a permanent Safe Harbour based on the Country-by-Country report and supports the proposal presented by the Business Advisory Group of Business @ OECD in this regard. The transitional CbCR Safe Harbour is very helpful to alleviate the administrative burden of detailed GloBE calculations on a jurisdictional basis. However, as detailed below, some implementation issues arise that demonstrate that there is still room for finetuning. Moreover, for consistency purposes as well as implementation costs and efficiency, that simplification should be made permanent.

GFIA thanks you for considering the concerns and suggestions hereafter described and remains available for further discussions on this major topic for the industry.

1. Scope and definitions

1.1 Definition of an investment entity and an insurance investment entity

Although there is no policy rationale for differences in treatment of Insurance Investment Entities and Investment Entities there appears to be a difference when looking at whether entities can inherit Investment Entity status from a parent. It is not clear whether Insurance Investment Entities qualify as a suitable parent entity unlike other Investment Entities. The specific point relates to the definition of an Investment Entity in Chapter 10, which is:

> "(a) an Investment Fund or a Real Estate Investment Vehicle;
>
> (b) an Entity that is at least 95% owned directly by an Entity described in paragraph (a) or through a chain of such Entities and that operates exclusively or almost exclusively to hold assets or invest funds for the benefit of such Investment Entities; and
>
> (c) an Entity where at least 85% of the value of the Entity is owned by an Entity referred to in paragraph (a) provided that substantially all of the Entity's income is Excluded Dividends or Excluded Equity Gain or Loss that is excluded from the computation of GloBE Income or Loss in accordance with Articles 3.2.1 (b) or (c)."

For (b) or (c) to apply, an entity has to be held by an Investment Fund or Real Estate Investment Vehicle. Under a strict reading of the Model Rules, an Insurance Investment Entity is not an Investment Fund.

GFIA recommends that Insurance Investment Entities therefore be included in the wording of part (a) to the definition of an Investment Entity.

1.2 Domestic Groups and Partnerships

Partnerships are generally flow-through entities, so according to Article 10.3.2 (b), they are stateless entities. If all entities in a consolidated group are resident in a single jurisdiction (e.g. Canada), but the group also includes one or more partnerships, OECD rules may indicate that the group will be an 'MNE Group' because the partnership is "*not located in the jurisdiction of the Ultimate Parent Entity*" in accordance with Art. 1.2.1 of the GloBE Rules. The group may therefore be subject to GloBE rules if it has at least € 750 million consolidated revenue even though there are no truly foreign entities in the group and all of the partnership´s income is allocated to its partners in Canada.

GFIA suggests that additional guidance is adopted which clarifies that a group whose entities are all located within one jurisdiction is not considered an MNE Group merely because the group includes a stateless flow-through entity, unless it is provided for in domestic legislation.

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2. Computation of GloBE Income and Loss

2.1 Equity investment inclusion election

As noted in GFIA's letter of 9 May 2023, some jurisdictions have concerns with the Equity Investment Inclusion Election as provided for in the consolidated commentary. There is therefore a request for additional guidance whereby an MNE may opt for the equity investment inclusion election on a line-by-line basis with regard to assets held by insurance companies so that if the election is made by a group with a constituent entity that is an insurance company, the election does not apply to Ownership Interests associated with an insurance company's separate account. In the US, insurance separate accounts of insurance companies hold the investments supporting variable insurance policies and annuities, that is, policies which cash values are invested in mutual funds or stocks.

While some companies understand through discussions with OECD officials that the interpretation of the consolidated commentary is that the equity inclusion election should not apply to assets supporting separate account policies, it is paramount the OECD makes the scope of the investment inclusion election clearer through specific guidance. If this additional guidance is not provided and the election instead were to apply on a jurisdictional basis to all Ownership Interests, as provided for in the consolidated commentary, thus including assets held in an insurance company's separate accounts, the equity investment inclusion election would create the distortion in the GloBE ETR calculation with respect to separate account securities which the commentary relating to securities held on behalf of policyholders seeks to avoid.

2.2 Use of alternative accounting standard under Article 3.1.3 of the GloBE rules

The reference to a "Material Competitive Distortion" in the GloBE commentary seems inconsistent, as it requires conformity with IFRS even if the accounting standard used for the consolidated financial statements is not IFRS but another Acceptable Financial Accounting Standard.

The starting point for the computation of the GloBE income or loss of a constituent entity is its financial accounting net income or loss determined in accordance with the accounting standard of the consolidated financial statement of the UPE group accounting. Sometimes, Constituent Entities maintain their financial accounts using an accounting standard that is different from the standard used in the preparation of the UPE's consolidated financial statements. The rule under Article 3.1.3 allows for the use of an alternative accounting standard if conversion of the entity level financial accounts to the group accounting standard is reasonably unpracticable. The rule is limited by three conditions set out under Article 3.1.3.

However, the GloBE commentary includes an additional condition where an Authorised Financial Accounting Standard as opposed to an Acceptable Financial Accounting Standard is used. In such a case the financial accounts must be adjusted for "Material Competitive Distortions". According to the definition the reference point for a "Material Competitive Distortion" is IFRS. Furthermore, the definition requires adjustments to conform with IFRS in case of the occurrence of a Material Competitive Distortion. For a group whose group accounting standard is not IFRS but another Acceptable Financial Standard, IFRS conformity seems counterproductive. For example, non-listed groups in Germany generally use German GAAP for the consolidated financial statements. It would be disproportionately burdensome if they were obliged to adjust entity level financial accounts to IFRS under the rule in Article 3.1.3.

Furthermore, the issue of conformity of the entity level financial accounts to the UPE´s group accounting standard is already addressed by Article 3.1.3 (c). Under this condition where permanent differences of more than €1 million occur, adjustments to conform to the accounting standard used in the Consolidated Financial Statements of the UPE are required.

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GFIA suggests removing the Material Competitive Distortion requirement from the scope of the rule under Article 3.1.3.

2.3 Articulation between GloBE rules and local GAAP consolidation rules for insurance companies without share capital

The GloBE rules usually refer to an accounting consolidation test to define the MNE Group for the purpose of the Global Minimum Tax.

However, in some jurisdictions, a collection of entities may form a group without being linked by ownership or controlling interests but by operational and common goals in terms of business, strategy or management. In France, for instance, insurance companies can take the form of legal persons without share capital such as mutual insurance companies or provident institutions. In the latter case they mostly provide health insurance and pension plans. For those companies, the French GAAP provides for specific consolidation rules, that are mandatory and acknowledge the organisational, economic and management links between entities within the group, absent any ownership or controlling interest. Those rules are recognised in the same way as classic consolidation accounting rules provided for insurance groups comprising companies with share capital that are linked by controlling interests. Hence, in France, tax consolidation rules or VAT groupings are applicable to insurance groups, regardless of the type of link defining the group.

Clarification should be provided in the commentary to the definition of the MNE Group or the consolidation and deemed consolidation test to acknowledge as equivalent, local legal forms of consolidation that groups comply with, to issue consolidated financial statements.

3. Covered taxes

3.1 Interaction between the US Corporate alternative minimum tax (CAMT) and the GloBE rules

Currently, deferred tax expenses in respect of tax credits are excluded from the computation of adjusted covered taxes under Article 4.4.1 (e) of the OECD model rule. This exclusion can result in unfair outcomes for insurers that have subsidiaries in the United States where the US CAMT applies, or another country that has or may develop in the future similar rules and regulations as the US CAMT. This issue is particularly acute for life insurers given the significant basis difference between GAAP income emergence and income emergence under the US Statutory Accounting Principles as determined by the National Association of Insurance Commissioners (NAIC).

As an example, where a non-US based multinational insurance company owns a US subsidiary, and that US subsidiary pays CAMT in year one, which is then utilised in year two – this will normally give rise to a Deferred Tax Asset (DTA) in year one and a deferred tax liability (DTL) when the credits are utilised the following year. However, under the OECD model rules, the CAMT credits will be excluded from the adjusted covered taxes in both years, with the result that the entity has an artificially higher ETR in year one and an artificially lower ETR in year two. If that artificially lower ETR ends up being less than 15%, the entity would be subject to top-up tax which in this case would be double taxation.

The OECD has recently acknowledged instances where Article 4.4.1(e) of the Model Rules produces overly harsh results and could result in double taxation, and therefore provided additional guidance to address certain of those fact patterns (e.g. the Substitute Loss Carry-forward DTA rules provided in the consolidated commentary).

GFIA suggests providing an exception from rule under Article 4.4.1(e) of the OECD Model Rules for the US CAMT credits or other similar tax credits, therefore allowing such taxes to be included in the adjusted covered taxes under GloBE rules, which would result in a more equitable ETR for impacted entities.

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4. Tax Neutrality and distribution regimes

4.1 Availability of Article 7.5 tax transparency election where investment returns economically accrue to policyholders.

For life insurance companies, it is important that a transparency election can be made in respect of investment funds which are held to back policyholder liabilities.

Regulated insurance companies hold trillions of euros in pensions and other savings investments on behalf of individuals. Existing investment structures have been set up on a long-term basis in accordance with national regulation and taxation rules – under which broadly tax as appropriate is charged. These investment structures have been set up to be tax neutral to ensure that investment return flows through to the appropriate company or individual and is taxed as appropriate at that level. The Pillar Two blueprint confirmed that such tax neutral structures do not trigger the concerns that underpin the policy rationale for the GloBE rules (see paragraphs 76-81 of the Report on Pillar Two Blueprint).

Pension investments made via an insurance company are economically the same and provide the same social function as those made via a standalone pension fund. Under the Model Rules (Article 1.5) a pension fund is an excluded entity and therefore outside the scope of the Model Rules. Investments made via an insurance company need to have an equivalent treatment. This can be provided with additional guidance on the existing rules and in particular, Article 7.5 of the OECD Model Rules.

GFIA therefore recommends that:

- the guidance mentioned below is extended to confirm that all regulated insurance companies can make the transparency election in respect of Investment Entities or Insurance Investment Entities held to back policyholder liabilities,
- it is confirmed that if the insurer or indeed any taxpayer adopts fair value accounting and is subject to a QDMTT rule, then this QDMTT is regarded as "tax" at a rate equal to the Minimum Rate. This would mean that the conditions for the transparency election are met (on the basis that the QDMTT is a 15% tax on profits).

The OECD February 2023 guidance addressed the issue relating to mutual insurers with regard to the Investment Entity Tax Transparency election provided for by Article 7.5 of the OECD Models Rules at paragraphs 10-11 of Article 3.6.2:

> *"10. As with all investments by a mutual insurance company, these investments are ultimately held for the benefit of policyholders, and there is therefore no accounting profit in either the financial accounts of the mutual insurance company or from a consolidated MNE Group perspective.*
>
> *11. However, the Investment Entity's financial accounts will not include an offsetting expense in respect of liabilities to policyholders. This is because the financial obligations to policyholders belong to the mutual insurance company rather than the Investment Entity. This means that the Investment Entity's accounts will often include an accounting profit, which could give rise to a Top-up Tax liability unless the mutual insurance company is able to make the Article 7.5 election to treat its controlled Investment Entity as a Tax Transparent Entity."*

In that respect, the following revisions are suggested to the administrative guidance consolidated in the commentary issued in April 2024:

> *"91. A Filing Constituent Entity may elect to treat a Constituent Entity that is an Investment Entity or an Insurance Investment Entity as a Tax Transparent Entity if the Constituent Entity-owner of that Investment Entity or Insurance Investment Entity is subject to tax in its location under a mark-to-market or similar regime based on the annual changes in the fair value of its Ownership Interest in the Investment Entity or Insurance Investment Entity and the tax rate applicable to the Constituent Entity-owner with respect to such income equals or exceeds the Minimum Rate. For this purpose, a Constituent Entity that is a ~~policyholder-owned~~ regulated insurance Entity (a "regulated ~~mutual~~ insurance company") and that owns an Ownership Interest in an Investment Entity or an Insurance Investment Entity, and that entity is held to back policyholder liabilities, e.g. for the purposes of a With-Profit or Par Fund or for unit-linked business, insurance separate account, or in a policyholder-owned insurance Entity, or where the policyholders are entitled to most of the investment entity´s*

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income, as defined by local regulatory requirements is considered to be subject to tax under a mark-to-market or similar regime based on the annual changes in the fair value of its Ownership Interest in the Investment Entity or Insurance Investment Entity at a rate that exceeds the Minimum Rate. The election does not need to be made with respect to all Constituent Entity-owners of the Investment Entity or an Insurance Investment Entity. However, the election applies to all of a Constituent Entity-owner's interests in the Investment Entity or Insurance Investment Entity which are held to back policyholders' liabilities".

"91.1.a For the avoidance of doubt, a Constituent Entity-owner is considered subject to tax with respect to such income at a rate equal to or exceeding the Minimum Rate if it is subject to a Qualifying Domestic Minimum Top-Up Tax."

4.2 Four-year-period for Undistributed Net GloBE Income of Investment Entities under the Taxable Distribution Method Election (Article 7.6 of the OECD Model Rules)

An issue of great concern for insurers as well as other investors that may opt for the Taxable Distribution Method Election is the four-year limitation period on Top-up-Tax free Undistributed Net GloBE Income of Investment Entities under the Taxable Distribution Method Election.

The four-year period conflicts with provisions in jurisdictions that provide for longer periods of tax-free retention of investment income.

For example, Germany´s Investment Tax Act allows for a fifteen-year tax-free retention of certain items of investment income. Above all, the four-year period disregards the business needs of insurers. Insurers require a steady and stable cashflow to meet their long-term obligations towards policyholders, such as paying out lifelong pension annuities. Consequently, investment income may have to be retained for long periods until it is used for payments to the insured. In France, for instance, insurance legislation provides for the payment of returns on capital gains to policyholders within eight years. Likewise, the tax treatment of earnings for holders of an endowment life insurance policy upon redemption is lighter after eight years of duration.

The four-year period would impact severely on the cash-flow management of insurers.

Long durations as a specific feature of insurance business are recognised by the GloBE Rules within the context of the Recapture Exception Accrual under Article 4.4.5 (g) of the OECD Model Rules. This exception could serve as a blueprint for the treatment of retained investment income also.

With the arguments mentioned above, GFIA strongly advocates to extend the four-year period, at least for the insurance sector. The period should match local tax legislation or be set at a minimum of ten years.

4.3 Minimum taxation requirement under the Taxable Distribution Method Election

The Taxable Distribution Method with respect to an Ownership Interest in an Investment Entity can only be made if the owner can be reasonably expected to be subject to tax on distributions from the Investment Entity at a tax rate that equals or exceeds the Minimum Rate.

This requirement results in an unfavourable position for the fund investment compared to a direct investment under the GloBE Rules as far as capital gains from the disposal of shares in portfolio shareholdings are concerned.

In some jurisdictions such as Germany, a capital gain deriving from the disposal of shares in a corporation by a corporation is tax exempt irrespective of any minimum shareholding or holding period. The tax exemption avoids double taxation of the accumulated earnings of the corporation whose shares are sold. Although tax exempt capital gains derived by a Constituent Entity from portfolio shareholdings are included in the GloBE income, this would usually not result in ETR below 15% if the Constituent Entity is located in a high tax jurisdiction. Other highly taxed income earned in the jurisdiction would usually raise the jurisdictional ETR above the 15 % minimum rate, thus shielding off low-taxed income items from Top-up tax. The same would not occur under the Taxable Distribution Method Election if a fund makes a tax-free distribution of capital

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Secretariat : rue du Champ de Mars 23, 1050 Brussels, Belgium
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gains. This is because Article 7.6.1 requires that the distribution itself must be subject to at least 15 % tax so that the owner cannot benefit from other high taxed income in the same way as capital gain derived from directly held shares. This in effect undermines tax systems which treat investments funds transparent or as-if-transparent. For example, Germany has the concept of exempting distributions by UCITS and German Special Investment Funds insofar as the distributions are funded by gains from the disposal of shares.

However, under the Taxable Distribution Method the election cannot be made where the distributions are not taxed at a tax rate that equals or exceeds the Minimum Rate. The ETR would then have to be calculated at the level of the fund. If the fund itself is not subject to taxation at a minimum rate, a Top-up Tax would be triggered. This unfavourable GloBE treatment would deter investors from investing in equity through funds. Where feasible, they will instead use direct investments and thus harm the fund industry.

Insurance companies are major investors in equity through funds to back insurance liabilities. Therefore, the standalone taxation of some investment funds as a result of the application of GloBE rules would harm the return on capital gains for policyholders and hinder the investment allocation in the industry.

GFIA therefore recommends adjusting the scope of the minimum taxation requirement provided for under Article 7.6.1. to a distribution insofar as the underlying fund income would be taxable in the hands of the ultimate investor where such investor is a regulated insurance company.

4.4 Double counting of investment income (Taxable Distribution Method Election, Article 7.6)

Pursuant to the rules provided under Article 7.6.2 of the OECD Model Rules, when the Taxable Distribution Method is elected, distributions made by the investment entity are included in the owner´s GloBE income. According to this provision, the inclusion is foreseen for both actual and deemed distributions. This would consequently lead to a double inclusion if the investment income of a fund is first deemed to be distributed and later actually distributed. For example, Germany in some instances treats items of investment income as fictitiously distributed for tax purposes at the end of the year in which the income is derived by the fund. The aim of the attribution for tax purposes is to ensure timely taxation in the hands of the investor. When the fund distributes the same investment income in a subsequent year, the distribution is excluded from the investor´s tax base. If, however, both the distribution for tax purposes and the subsequent actual distribution were to be included in the investor´s GloBE income, the same investment income would be included twice.

Therefore, additional guidance commenting Article 7.6.2 (a) would be very helpful to clarify that distributions from an Investment Entity are included in the constituent owner´s GloBE income only to the extent that such distributed investment income has not been already included in a prior year as a deemed distribution.

GFIA recommends completing the revision by including in the aforementioned exception the deemed distributions made before the GloBE Rules came into force, and the deemed distributions made during the transitional CbCR Safe Harbour. These deemed distributions are already taxed at investor level at the end of the year in which the income is received by the fund.

4.5 Deferred taxes in relation to deemed distributions by investment entities under the Taxable Distribution Method Election (Article 7.6)

As a consequence of the issue raised in paragraph 4.4 above, there is also concern about the treatment of deferred taxes that arise due to timing differences with respect to distributions made by investment entities that are included in the owner´s GloBE income under the Taxable Distribution Method Election.

In some jurisdictions (e.g. Germany), domestic tax law treats funds as semi-transparent by way of deeming fund income as distributed. The deemed distribution is then taxed at the level of the owner. In financial accounting, this gives rise to deferred tax effects. A deferred tax asset will arise in the year of the deemed distribution to account for the temporary difference between the tax base and financial accounting income. The negative tax expense resulting from the deferred tax asset will reduce the Adjusted Covered Taxes. This, in turn, will depress the ETR. The deemed distribution will be included in the owner´s GloBE income but the corresponding tax will not be included in the amount of the Adjusted Covered Taxes as a result of the negative deferred tax expense. The reversal of the deferred tax asset (in the year the investment income is distributed) will have the opposite effect, i.e. an inflated ETR.

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Secretariat : rue du Champ de Mars 23, 1050 Brussels, Belgium
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The current version of the consolidated commentary and available administrative guidance do not address these unintended effects of deemed distributions.

As mentioned in paragraph 4.4, additional guidance should be drafted to address the risk of double counting of distribution income. Correspondingly, the timing difference arising in respect of the deemed distribution should be addressed also. In that regard, the provisions under Article 4.4.1 (a) of the OECD Model Rules can then be applied. The deferred tax expense triggered by excluded income items is excluded accordingly from the Total Deferred Tax Adjustment Amount. As a result, the negative tax expense resulting from the deferred tax asset in the year of the deemed distribution as well as the tax expense from the reversal of the deferred tax asset in the year of the distribution is excluded.

5. Transitional CbCR Safe Harbour

5.1 Simplified ETR Test - Policyholder tax mismatch

In the GloBE rules, provisions under article 4.2.2(e) of the OECD Model Rules exclude policyholder tax from the definition of Covered Taxes. There is a similar adjustment provided for under Article 3.2.9 to remove the recharge of this tax to the policyholder from GloBE income. This avoids the policyholder tax effectively grossing up both the numerator and the denominator while economically not being borne by the MNE group. Due to the fluctuations in amount of policyholder tax which is often calculated by reference to investment returns (including corporate income taxes or withholding taxes), this distortion could often be very significant, hence the need to adjust.

The consolidated commentary to Article 3.2.9 articulates this issue and the rationale for excluding both items clearly at paragraph 138 onwards.

The ETR interim safe harbour calculation is based upon a calculation of Simplified Covered Taxes divided by Profit Before Tax as reported on the CbCR. Simplified Covered Taxes are calculated by reference to Income Tax amounts included in the MNE Groups qualified financial statements, after eliminating taxes that are not Covered Taxes. Therefore, this excludes policyholder tax from the numerator of the test. However, the Profit Before Tax in the CbC report is not adjusted for the recharge made to policyholders unlike the detailed calculation. This therefore creates a significant distortion to the ETR calculation due to the one-sided nature of the adjustment being made.

GFIA therefore requests that where policyholder tax is excluded from the Income Tax amounts included in the simplified ETR calculation, an equivalent adjustment is also made to the Profit Before Tax. This would align with the policy intent of the rules and enable insurers to make use of the interim safe harbour as the rules viewed in their entirety intend.

5.2 Simplified ETR Test - Net Fair Value Losses Exclusion

Insurers hold trillions of euros of investments. Most of these meet the definition of portfolio shareholdings or are not ownership interests, however, a significant amount are fund investments which whilst not being consolidated are nevertheless, according to the definitions in Article 10 of the OECD Model Rules, non-portfolio investments. This is as the insurer owns more than 10% of the ownership interest but is not required to consolidate the entity.

The interim safe harbour calculation requires net unrealised losses of non-portfolio investments of greater than €50 million to be excluded from the interim safe harbour simplified ETR test. This reflects the participation exemption many countries have and avoids an undue inflation of the ETR where a non-taxable loss would have reduced the Profit Before Tax, and hence the denominator, but would not give a corresponding tax credit reducing the numerator.

However, many tax regimes (e.g. UK) tax investments on a mark-to-market basis – the OECD Inclusive Framework acknowledges this, and it is the reason why the Article 7.5 tax transparency election was designed as it is. For insurers in these countries, a tax deduction is given for unrealised fair value losses. The same is true for insurers that are taxable on the impairment on ownership interests. Stripping out the net

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loss but leaving behind the tax deduction in the simplified ETR test produces a significant distortion to the ETR.

GFIA therefore requests that the simplified ETR test be updated so that where fund investments are taxable on a mark-to-market basis or on the impairment, or where the investments are held in respect of separate accounts or similar products, to the extent that the investment movement is matched by an offsetting liability, there is no requirement to adjust the profit before tax for unrealised losses as no ETR distortion arises.

Similarly, the simplified ETR test should be updated such that, if the unrealised fair value losses of greater than €50 million are economically matched by a movement in insurance reserves, then, consistent with the commentary provisions on liabilities from securities held on behalf of policyholders, a corresponding adjustment should also be made for purposes of the Transitional CbCR Safe Harbour.

6. Joint ventures

6.1 Exclusion of flow-through-Joint Ventures with low-taxed owners from the CbCR Safe Harbour

According to the Safe-Harbour Report, the Transitional CbCR Safe Harbour shall not apply in the UPE jurisdiction where the UPE is a Flow-through Entity unless all the Ownership Interests in the UPE are held by Qualified Persons (i.e. persons that are taxed at 15% or more). The rule is intended to avoid certain mismatches between GloBE Rules and CbCR that arise because flow-through entities are stateless under CbCR. However, the rule does not seem justified when applied to flow-through-Joint Venture´s. This is because, the Joint Venture´s GloBE income/loss and total revenues are not taken from CbCR data anyway. Instead, those data are directly taken from the Joint Venture´s financial accounts.

Therefore, the CbCR Safe-Harbour rules on Joint Ventures should be adapted accordingly.

6.2 Treatment of flow-through Joint Ventures under GloBE rules

There is uncertainty on the treatment of flow-through Joint Ventures and Joint Venture groups under Article 6.4 of the OECD Model Rules.

According to Article 6.4.1 (a), a Joint Venture is treated as if it was the UPE of the Joint Venture group. It is unclear whether this also applies in instances of a stand-alone Joint Venture. If so, then Article 7.1 of the OECD Model Rules would apply where the Joint Venture is a flow-through entity. Article 7.1 requires that the GloBE income is reduced provided that - put simply - the owners (outside the group) are sufficiently taxed. Uncertainties are exacerbated by the GloBE consolidated commentary. The last sentence of paragraph 89 of the consolidated commentary to Article 6.4 seems to require a push-down of taxes paid by the members of the MNE group to the Joint Venture group members. This would be contradictory to provisions under article 7.1 of the OECD Model Rules. Clarification is therefore needed.

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Contacts

Suzy Zozor, Chair, Taxation Working Group (s.zozor@franceassureurs.fr)

GFIA secretariat (secretariat@gfiainsurance.org)

About GFIA

The Global Federation of Insurance Associations (GFIA), established in October 2012, represents through its 42 member associations and 1 observer associations the interests of insurers and reinsurers in 69 countries. These companies account for 89% of total insurance premiums worldwide, amounting to more than $4 trillion. GFIA is incorporated in Switzerland and its secretariat is based in Brussels.

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Tel : +32 2 894 30 81 E-mail : secretariat@GFIAinsurance.org
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